Supreme Court, U.S.
FILED

951777 FEB 13 1996

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In The

Supreme Court of the United States

October Term, 1995

JOHN ALFRED BASS

Petitioner,

vs.

SARASOTA COUNTY, FLORIDA,

Respondent.

Petition for a Writ of Certiorari to the United states Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN ALFRED BASS
4321 South Tamiami Trail
Sarasota, Florida 34231
(941) 924-9190

QUESTION PRESENTED FOR REVIEW

Whether the Petitioner is entitled to a trial by jury as stated in Seventh Amendment in THE BILL OF RIGHTS. Petitioner, also feels the fines levy are in violation of Eighth Amendment in THE BILL OF RIGHTS. Petitioner states since use of said property had been on going for 30 years before rewriting of Zoning Laws, Petitioner, sites ***nonconforming use***, a use of land "which lawfully existed prior to enactment of a zoning ordinance and which may be maintained after the effective date of the ordinance"

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No.

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SARASOTA COUNTY, FLORIDA

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

The petitioner John Alfred Bass respectfully prays that a writ of certiorari issue to review the judgment of The Circuit Court of the Twelve Judicial Circuit In and for Sarasota County, Florida entered on December 27, 1996, as referring to Fifth, Seventh, Eight and the Fourteenth Amendment of the Constitution.

OPINIONS BELOW

The opinions and judgment of Supreme Court of Florida, District Court of Appeal, Second District in ***John A. Bass v. Sarasota County, Florida. Rehearing denied,*** is reproduced in the(Appendix G)

STATEMENT OF JURISDICTION

The judgment of The Supreme Court of Florida, on October 2, 1995 affirming the petitioner's conviction, ruled the Court is without jurisdiction Petition for review was dismissed. The petitioner invokes this Court jurisdiction under 28 U. S. C. §1254(1) (Appendix G)

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner contends, that do to the fact the amount of fine exceeded $20.00 I have the right to a trail by jury, as stated in Article VII in the BILL OF RIGHTS. Petitioner requested a trial by jury, in a prepared statement filed with the Clerk of the Court.((11/29/95 line 12) (Appendix C) . The denial of request violates my rights, under aforementioned Article. Also Article V states it is unlawful to take ones property.

STATEMENT OF THE CASE

A. Relevant Procedural History

On September 27, 1993 I receive a affidavit of violation/notice of ordinance (75-38 7.1 Sarasota County, Florida) (Appendix E) Citing I was in violation of newly intuited ordinance(7/24/90)(Appendix F). This wordy ordinance vaguely states use of storage trailers on private property to be in violation. I feel it is my constitutional right to continue use of said property as this was my intentional reason for purchasing property in 1966, and have continued to use trailers for storage, since

that time. With the purchase of property I content only to own rights of use of said property hence with newly passed ordinance I was denied my right of use of said property.

Sarasota County is using Special Masters, appointed by county commissioners, to hear code enforcement cases, at the hearing January 10, 1994 the Special Master clearly states it is not within her jurisdiction to rule upon arguments raised on constitutional issues (page a line 23—page b line 23)(Appendix A). Failing to adhere to her statement she continued to pass judgment on my case. A second hearing was scheduled for April 18, 1994, at which time I sent employee Jeanne Woolf in my behalf, to request a continuance, because I was involved in a serious auto accident and was physically unable to attend. Continuance was denied.(Page c line 22- page d line 13)(Appendix B). Fine was accessed at $100.00 per day. (Page e lines 9-12)(Appendix B)

Upon receiving Summary Judgment hearing notice I filed statement requesting jury trial with Clerk of the Court on 11/29/96. Request was denied, as Summary Judgment of Foreclosure hearing was held December 26, 1995. (Appendix H)

I satisfied the judgment amount of $ 67,210.27 to prevent the sale of my property on the courthouse steps, as scheduled for March 27, 1996.(Appendix H. Page j line 13 of text body) Stating payment did not constitute a admission of guilt, but was paid under duress to forestall the sale of my property.

B. Summary Of Facts

I respectfully pray your Court will except my case, as I feel my rights have been violated. When I bought my land 30 years ago it was to serve the public as well earn my livelihood. Since 1966 I have use storage trailers to assist in operation of my business, when served with ordinance violation, I believed I was entitled to exception as "Grandfather Right" would be invoked. Not only was that not the case but fines and penalties, and interest remained accruing against me before my case was through the court system. Compelling me to mortgage my property to prevent the local governing agency from selling my property at a foreclosure sale to satisfy the lien placed against me by the local county commissioners.

Therefore having not received a fair and impartial trail, I beg the Honorable United States Supreme Court to render in my favor the rehearing of my case.

REASONS FOR GRANTING THE WRIT

IN REJECTING THE PETITINER CLAIM , THE COURT OF APPEALS CLEARLY DISREGAURDED PRINCIPLES ESTABLISHED BY THIS COURT

At the December 26, 1995 Summary Judgment hearing the court completely ignored my request to be allowed to move forward in the courtroom for the purpose of enabling me to hear the proceeding.(page g-line 19)(Appendix E) Therefore my inability to hear and fully understand was a great handicap for me. This was previously brought to the courts attention, at hearing before Masters when I sent a representative to plea for a continuance as I was in a extremely serious auto accident which has left me with 70% hearing loss. The continuance was denied.

Upon requesting a Trial before Jury, this motion was also denied. I feel that the governing body of the County of Sarasota Florida has singled out myself and my property, as similar usage of trailers exists throughout the county. Besides original violations summons I have received three citations involving my property since the progression of attempting to have my case heard in United States Supreme Court.

The Special Master hearing my case stated it was not within her jurisdiction to rule upon constitutional issues, but continued to levy fines against said property. The cost of legal counsel was and still is beyond my means, the cause of numerous trailers in the first place arose with a severe slump in retail. The interruptions of my business days to appear in court

and the many hours preparing my defense have caused irreversible damage to both my financial well being and my ability to conduct business as usual.

The local paper published an article with the first sentence stating " A two-year battle over the use of semi-trailers as storage sheds by a South Trail business may finally be coming to an end. In fact, it may mean the end of the business." This printed article hurt the business, many people believing I had closed. This article appeared six months before the Summary Judgment was scheduled, it contains many quotes from the County Attorney putting my business reputation in jeopardy. The article appeared July 20, 1995, the Summary Judgment was held December 26, 1995, leaving my business severely penalized. I have made many attempts to acquire a local attorney but none would consider accepting the case against the county. My first attorney was from Miami area but travel expense besides attorney fee again became more then I could financially manage.

CONCLUSION

Considering the reasons above, the writ should be granted and the case set down for argument. Sarasota County attempted to abolish my "constitutional rights" by denying me a trial by jury and not upholding the ***nonconformig use*** (Appendix I Page m) set forth by our constitution to forbid the taking of a persons property or property rights. As a citizen of these United States I feel I deserve my day in court.

Respectfully submitted,

John A. Bass Pro Se
4321 South Tamiami Trail
Sarasota, Florida 34231
(941) 924-9190

taxes. If I was to remove them trailers it would be a problem for me.

On the other hand, if --- if I have a right and property is only a bunch of rights that you have, numerous rights to do things with the property.

If I bought the property I had the right at the time, and if the State takes them rights off of me, I presume the State would be --- have to give me some kind of compensation for that.

Just as if they took a corner of my property, and they took it for a highway, which they've already done that, I would be --- I would assume to get some compensation for this, and that's it.

Since 1966 I've been doing it, and I think it would upset a lot of people in this town. They've been coming to my place for all them years, and I think it would upset them.

SPECIAL MASTER: Okay. Do you have cross examination Miss Korn?

MS. KORN: No.

SPECIAL MASTER: Mr. Bass, it is not in my jurisdiction to talk about constitutional issues.

You've raised a constitutional argument,

and this is not the jurisdiction of the Special Master to hear and decide --

Mr. Bass: I understand.

Special Master: -- cases based upon constitutional arguments, and you've raised the 5th and the 14th Amendments, due process type of an argument.

Whether or not you are grandfathered in, apparently you were not grandfathered in for this use, so I find that the use of semei-tractor trailers ---

Mr. Bass: You understand we were there before this ordinance was passed?

Special Master: I know. The real issue is whether there is a grandfathering clause.

In terms of the issue of whether there is a taking, or what's called an inverse condemnation, that's not within my jurisdiction to decide.

Mr. Bass: Uh-huh.

Special Master: I can only decide whether there is a County Ordinance violation. Whether there is an inverse condemnation has to be decided by a different kind of court.

Mr. Bass: Can I ask you, if you have this, and you do these things, and you acquire the

Special Master: The next case is a penalty hearing in Sarasota County versus John Bass, Case Number 93-332. Would you raise your right hand?

Do you swear or affirm under penalty of perjury the testimony and evidence you will present is truthful?

Ms. Wolfe: I'm here with a message from Mr. Bass. He was in an auto accident over the weekend, and he is unable to attend.

Special Master: And your name is?

Ms. Wolfe: Jean Wolf

Special Master: Okay. And are you ---

Ms. Wolfe: I'm an employee.

Special Master: Okay. And are you requesting any type of relief, or what?

Ms. Wolfe: Well, I don't really know. He just called me this morning and asked me to come and say that he ---

Special Master: Okay.

Ms. Wolfe: --- would not be able to attend to today.

Special Master: And his automobile accident was over the weekend?

Ms. Wolfe: Saturday.

Mr. Wilson: I imagine that amounts to a

d

continuance request. I would presume that's what he's seeking, giving him the full benefit of the doubt.

Special Master: What is the County's position on that?

Mr. Wilson: Well, we would oppose a continuance.

Special Master: Well, I would normally grant a continuance if he had had an accident that would prevent his compliance, but given that it was an accident that happened over the weekend, and he had 45 days to come into compliance, I will deny the continuance request, if htat's what's being made, because he did have a significant amount of time before last weekend to come into compliance with these trailers.

Are you ready to proceed?

Mr. Wilson: Would you like to have a seat?

Mr. Wilson: This case is beforeyou this morning at the penalty order phase. It's based on a January 10th , 1994 order where you found that Mr. Bass was keeping and using semi-traliers, on his property

e

Special Master: violation.

And although Mr. Bass was given 45 days to come into compliance, he --- on January 10th , and this case was originally set for a hearing on March 7th , he has still, as of day, which is April 18th , not come into compliance.

Although the County recommends a fine of $150.00 per day, in light of fines and other cases, I think a fine of $100.00 per day beginning on April 19th , 1994 is more in line with the fines on other zoning cases, therefore I'm ordering a fine of $100.00 per day beginning on April 19th , 1994

Mr. Wilson: Thank you.

Special Master: Would you like to get this to Mr, Bass ---

Ms. Wolfe: Can I ask something? I've been employed with Mr. Bass since 1976, and four of those trailers have set there that entire time.

Why is this a violation of the zoning now, when it hasn't been for the last 20 years? That doesn't make sense to me. I mean, I'm just a citizen asking a question.

Mr. Wilson: Well, it is Mr. Bass's responsibility if he wants to prove grandfathering an illegal nonconformity.

APPENDIX C
Request for Jury Trial

NOVEMBER 29, 1995

Re: Sarasota County v. John A. Bass case # 95-4305-ca-01

The Honorable Judge Dubensky:

1. Defendant John A. Bass denies all of the allegations.
2. The master for the county who has imposed the fine exceeded her authority under the Florida and The United States Constitution it is therefore unconstitutional.
3. The Defendant is in the process of executing his constitutional rights and various remedies the lawsuit by the County is premature.
4. The penalty and fine are against the public policy of the State of Florida.
5. the fine and penalty imposed on the Defendant will amount to an unlawful and illegal taking of property in violation of the constitutional rights of this Defendant and his property.
6. The Defendant is seeking additional remedies in the United States Supreme Court which prevents this action from continuing.
7. The Defendant requests that this lawsuit be immediately dismissed by the Court the Defendant has not violated any Laws.
8. The penalty and the fine are excessive and violate the Law as the Law applies to this property and this Defendant.
9. The County failed to give the Defendant a adequate opportunity to present his case.
10. The penalty and fine would impose a forfeiture of the property of the Defendant.
11. All trailers have been removed by Mr. Bass.
12. The Defendant requests a trail in front of a Jury.
13. The Defendant requests a hearing in front of this Court

Respectfully,
John A. Bass

APPENDIX E
Transcript of Summary Judgment

Plaintiff's entitled to a summary judgment and foreclosure of the codes enforcement lien.

The affidavit further establishes the indebtedness owing to the County under the lien as of the date of liling the Motioon of Summary Judgment, which was $59,100. I have not received any responde to the motion for Summary Judgment

And I believe all the facts are undisputed and we are entitled to a summary judgment as a matter of low as set forth in the motion of the affidavit.

THE COURT: All right. Mr. Bass?

MR. BASS: Yes, sir.

THE COURT: All right. What would you like to say, Mr Bass?

MR. BASS: Well, I never got heard in court. I hired a lawyer and we went to court—he went to court without me.

Can I come up here because my hearing is not good? My sight is not good. I had a bad accident just before I was due to go to mass. I got hit by a car. I was in a van, but got hit by—I was standing still and they ran into me and the mirror came off the van and hit me on the side of the head. I lost 70 percent of the hearing in one ear

ORDINANCE 90-31

Section 7. **SUPPLEMENTARY DISTRICT REGULATIONS**

1. ACCESSORY USES AND STRUCTURES.

In residential districts accessory uses and structure shall not be located in front or side yards but may be located in rear yards not less than six (6) feet from the rear lot line; provided, however, that accessory structures for the housing of persons, such as guest houses, shall not be located in any required yard; and provided further that no accessory structure shall be located on waterfront property closer than twenty (20) feet to the mean water line, except for the vertical wall of a swimming pool of screened enclosures which may be located within ten (10) feet of the mean high water line.

In residential districts on double frontage lots, through lots or corner lots, accessory uses and structures shall not located in either of the required front yards, but may be located in one but not both side yards. In all districts, tractor trailers are prohibited as storage buildings or structures except as permitted on active construction site (ord. 90-31, 7/24/90)

Supreme Court of Florida

MONDAY, OCTOBER 2, 1995

JOHN A.. BASS ,	**	
Petitioner,	**	CASE NO. 86,488
vs.	**	District Court of Appeals, 2ND District- No. 94-03907
SARASOTA COUNTY, FLORIDA	**	
Respondent.	**	

It appearing to the Court that it is without jurisdiction. The Petition for Review is hereby dismissed.

No motion for rehearing will be entertained by the Court.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

H

cc: Hon. William A. Haddad, Clerk
Hon. Karen Rushing, Clerk
w/copy to Circuit Court Judge

Mr. John A. Bass
Mr. Ira R. Gordon
Mr. Edward C Wilson

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

SARASOTA COUNTY, FLORIDA
Plaintiff,

v. CASE NO. 95-4305-CA-01

JOHN A. BASS, et al.,
Defendant
_____/

SUMMARY JUDGMENT OF FORECLOSURE

On this day came on to be heard, Plaintiff, Sarasota County's Motion for Summary Judgment, and the Court, having reviewed the motion and summary judgment evidence and the pleadings and arguments by the Plaintiff and the Defendant, and being otherwise fully advised in the premises:

IT IS ORDERED AND ADJUDGED that:

Due and legal service of process has been effected on the Defendants to this action and the Court has jurisdiction of the parties and the subject matter hereof.

1. Plaintiff, Sarasota County, has a valid lien upon the property hereinafter described pursuant to the Order Assessing Administrative Fine recorded at Official Records Book 2623, Page 802, Public Records of Sarasota County, Florida and said lien is unpaid and Sarasota County is entitled to foreclosure of said lien and Sarasota County is due the sum of $65,220.47 from Defendant, John A. Bass.

2. Plaintiff holds a lien for the total sum set forth in paragraph 2 hereof superior to any claims, interests of estates of Defendant, John A. Bass and Defendant, Allen's Bee Ridge Amoco, Inc. on the following-described property located in Sarasota County, Florida:

Lots 1, 2 and 3 Block "A" HARBOR OAKS SUBDIVISION, as per Plat Book 2, Page 44, Public Records of Sarasota County, Florida, together with all improvements thereon.

Less that portion of Lot 1 lying within 53 feet of the

center line of construction of State Road 45, Section 1702, heretofore deeded to the State of Florida, which deed is recorded on Official Record Book 147, Page 188, Public Records of Sarasota County, Florida.

4. If the total sum set forth in paragraph 2 hereof, with interest thereon at twelve percent (12%) per annum and all costs of this action accruing subsequent to this judgment, are not paid immediately, the Clerk of this Court shall sell property described in paragraph 3 hereof at public sale on the 27 day of March, 1996, at 11:00 a. m., (a day not less than 20 days after the date of this Judgment), to the highest bidder for cash, except as hereinafter set forth, at the north door of the east wing of the Sarasota County Courthouse, Sarasota, Florida, in accordance with Florida Statute, Section 45.031.

5. Plaintiff shall advance all subsequent costs of this action, and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property described in paragraph 3 at the sale. If Plaintiff is purchaser, the Clerk shall credit Plaintiff's bid with the total sum with interest at twelve percent (12%) and costs accruing subsequent to this judgment or such part of it as is necessary to pay the bid in full.

6. On filing the Certificate of Title with respect to the property described in paragraph 3 hereof, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying; first, all of Plaintiff's costs; second, documentary stamps affixed to the Certificate; third, the total sum due to Plaintiff, as set forth in paragraph 2, less the items paid, plus interest at the rate prescribed by law from this date to the date of the sale to Plaintiff; and shall retain any amount remaining pending the further order of this court.

7. The successful bidder and purchaser at the foreclosure sale of the real property being foreclosed herein shall pay, in addition to the amount bid, any documentary stamps and Clerk's fees, including registry fee, relating to the issuance of the Certificate of Title to be issued by the Clerk to the successful bidder and purchaser. At the time of the sale the successful high bidder shall post with the Clerk a deposit equal to five percent (5%) of the final bid or $1,000 whichever is less. The deposit shall be applied to the sale price at the time of payment. If the final payment is not made within the prescribed period, the Clerk shall re-advertise the sale as provided in this section, and pay costs of the from the deposit. Any remaining funds shall be applied toward the judgment.

8. On filing the Certificate of Title with respect to the property described in paragraph 3 hereof, Defendants, John A. Bass and Allen's Bee Ridge Amoco, Inc. and all persons claiming by, though, under or against them since the filing of the Notice of Lis Pendens in this action are foreclosed of all estate, interest or claim in the property described in paragraph 3, and the purchaser or purchasers at the sale shall be let into possession of the property, and the clerk of the Circuit Court is hereby ordered to issue a Writ of Possession upon demand by the purchaser or purchasers.

9. The Court retains jurisdiction over this action for the purpose of making any and all further orders, without limitation, which it may deem necessary and proper.

DONE AND ORDERED in Sarasota, Sarasota County, Florida this 27 day of December, 1995.

"s/_____"
Peter A. Dubensky
Circuit Court Judge

Conformed Copies to:

Scott H. Carter
Assistant County attorney
John A. Bass
David Bone, Esquire

QOUATION; Barron's Legal guides

NONCONFORMING USE a use of land "which lawfully existed prior to the enactment of a **zoning** ordinance and which may be maintained after the effective date of the ordinance" although it no longer complies with the use restrictions applicable to the area. 508 P. 2d 190, 192. Continuation of the existing use comprehends preservation of both the functional use of the land and the physical structures thereon, and neither of these aspects of "use may be extended or enlarged once the zoning restrictions has taken effect. 102 A. 2d 84. Only actual use are protected by this doctrine, and not merely uses for which the land might be suitable. 86 A. 2d 74,79 The protection may extend to a use not yet in existence, but whose development has reached a certain stage. 508 P 2d 190, 192 Compare **variance. See grandfather clause.**

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Petitioner,

vs.

SARASOTA COUNTY, FLORIDA,

Respondent.

Supplemental Petition to Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

SUPPLEMENTAL APPENDIX TO PETITION OF WRIT OF CERTIORARI

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IN THE SECOND DISTRICT COURT OF APPEALS,
LAKELAND, FLORIDA

AUGUST 29,1995

JOHN A. BASS,

Petitioner(s),

v.

SARASOTA COUNTY, FLORIDA,

Respondent(s).

BY ORDER OF THE COURT

Counsel for petitioner having filed a motion for rehearing in the above-styled petition for writ of certiorari, upon consideration, it is

ORDERED that the motion is hereby denied.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL ORDER.

WILLIAM A. HADDAD, Esq.

C: Ira R. Gordon Esq.
John A, Bass
Edward C. Wilson Esq.
/SC

IN THE SECOND DISTRICT COURT OF APPERLS,
LAKELAND, FLORIDA

JUNE 28, 1995

JOHN A. BASS,

Petitioner(s),

v.

SARASOTA COUNTY, FLORIDA,

Respondent(s).

BY ORDER OF THE COURT:

T.C. No. 94-710-CA01

Petitioner having filed a petition for writ of certiorari, upon consideration, it is ordered that the petition for writ of certiorari is hereby denied.

FRANK, C. J., and THEADGILL and WHATLEY, JJ., Concur.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL ORDER.

WILLIAM A. HADDAD, CLERK

c: Ira R. Gordon, Esq.
Edward C. Wilson, Esq.
Karen Rushing, Clerk
John A Bass
/SC